



DEPARTMENT OF STATE

Washington, D.C. 20520

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TO: T - James L. Buckley

FROM: L/LEI - T. Michael Peay *TPP*

SUBJECT: Illegal Transfers of Technology: The Role of
Extradition and Mutual Legal Assistance Treaties

This office has been asked for its views about the extent to which existing U.S. extradition and mutual legal assistance treaties, and those under negotiation, cover offenses relating to export control violations involving illegal transfers of technology. Following is a brief discussion of the current and potentially expanded role that such treaties can play in this regard.

Extradition Treaties

The United States currently has in force nearly 100 extradition treaties, many of which are 50 or more years old and do not address such modern crimes as transfer of technology offenses. Some of our more recent treaties, however, variously provide for extradition for offenses against laws relating to "international trade," "importation, exportation or transit of goods, articles, or merchandise, including violations of the customs laws," "protection of industrial property or copyright," or "willfull evasion of taxes and duties." Provisions such as these are currently found in several U.S. extradition treaties, such as those with Colombia (1980), the Federal Republic of Germany (1980), Japan (1978), Mexico (1980), the Netherlands (1980) and Norway (1977).

Such descriptions of extraditable offenses are arguably broad enough to cover a number of offenses relating to illegal transfers of technology, although to date there have not been any extradition requests alleging such offenses.

Mutual Legal Assistance Treaties

Mutual legal assistance treaties have proven to be very valuable law enforcement tools. Such treaties enable U.S. law enforcement authorities to obtain information and evidence, as well as other forms of foreign legal assistance in aid of U.S. criminal investigations and prosecutions. To date, the U.S. has been able to negotiate only four such treaties, in particular, those with Switzerland (1973) and Turkey (1979) (both currently in force) and with Colombia (1980) and the Netherlands (1980) (both ratified by the U.S. but awaiting ratification by Colombia and the Netherlands). The small number of such treaties is due in part to the complexity of the legal issues covered and to the difficulty of reconciling two

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different legal systems as well as to the fact that the U.S. has only recently embarked upon a program of negotiating such treaties. Additional considerations are the political will of a foreign government to enter into such a treaty and the commitment of USG attorney resources to negotiate such treaties.

As with extradition treaties, mutual legal assistance treaties generally provide for legal assistance in connection with any criminal matters when the facts underlying the offense charged in the Requesting State would also constitute an offense in the Requested State. This "dual criminality" standard is not always a prerequisite, however. The first precedent in which we negotiated that prerequisite out of a treaty is our 1980 Mutual Legal Assistance Treaty with Colombia. Under that treaty, the U.S. may obtain assistance even when the criminal act under investigation is not an offense in Colombia, or is not regulated by its laws. Similar provisions are found in the treaty with the Netherlands which has already received U.S. ratification, and in the treaty currently under negotiation with the Federal Republic of Germany. Such a provision would be particularly useful in a mutual legal assistance treaty with a country whose export control laws are not as extensive as those in the U.S.

Conclusion and Recommendation

The United States, through the Departments of State and Justice, has in recent years been pursuing a policy of enhancing its international law enforcement efforts by: (a) modernizing and expanding the network of U.S. extradition treaties; and (b) increasing the number of mutual legal assistance treaties. This policy is being implemented, however, within a framework of budgetary and personnel constraints, coupled with the need to take into account appropriate criteria for determining which countries should receive the highest priority. Among the criteria currently applied are (i) existing and projected U.S. or foreign requests for extradition and legal assistance; (ii) countries significant to U.S. anti-narcotics efforts; and (iii) bilateral political considerations.

In carrying out the negotiation of such law enforcement treaties, the Office of the Legal Adviser, in conjunction with the Justice Department, will seek the inclusion within such treaties of provisions that will expressly encompass export control violations involving transfers of technology. In fact, during the current negotiations with the Swiss for a new extradition treaty, we said that we wanted to make sure the new treaty would make it possible for the U.S. to extradite persons charged with violating our laws governing technology transfer. The Swiss have agreed in principle to include such a provision.

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State and Justice are currently endeavoring to draw up a list of priority countries where the U.S. should primarily target its negotiations resources. In deciding which countries should be placed on that list, L will seek to give due priority to those friendly countries with respect to which the U.S. has the greatest problems with technology transfers in violation of U.S. law. L is prepared to consult with you and other interested offices in this connection.

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